IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7154 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MAHESHBHAI DHAYABHAI AUD - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MS Pandya for Ms.KRISHNA U MISHRA for Petitioner No(s).: 1.
RULE SERVED for Respondent No(s).: 1,2.
MR PD BHATE, AGP for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 20/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 08.03.2005 passed by the Police Commissioner, Surat City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “dangerous person” and is

required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to five criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.
3. Learned advocate appearing on behalf of the petitioner detenu has submitted that when the detention order dated 08.03.2005 came to be passed, the petitioner was in judicial custody in connection with five criminal cases registered against him with Varachha Police Station under the Indian Penal Code since the petitioner was arrested on 06.01.2005 in connection with the offence at Sr.No.1 mentioned in the grounds of detention and there was no likelihood of continuing anti social dangerous activities so as to disturb the public order by the detenu. It is further submitted that there is delay in passing the detention order against the petitioner. The last offence was registered against the petitioner on 28.12.2004 and the detention order came to be passed on 08.03.2005. Learned advocate appearing for the petitioner has relied upon the decision of this court in the case of Elesh Nandubhai Patel V/s Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :
4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.
5. The impugned order came to be challenged by the petitioner detenu on various grounds. One of the grounds is the delay in passing the detention order. The last criminal case was registered with Varachha Police Station being CR No. 1 of 2005 against the petitioner on 28.12.2004 under Section 379 of Indian Penal Code and, therefore, the delay in passing the detention order may reflect non-application of mind in arriving at the subjective satisfaction by the detaining authority. It is true that the delay by itself in passing the detention order not fatal to the detention of the person and has to be looked into from the facts of each case. The detaining authority has relied upon the unregistered case filed on 27.01.2005 and submitted the proposal on 28.01.2005 and, thereafter, passed the detention order against the petitioner on 08.03.2005. Considering the facts and circumstances of the case, it appears that there is substance in the contention of the petitioner that an unregistered case has been referred only with a view to cover up the gap to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention.
6. In view of what is stated above, the petition is allowed. The order of detention dated 08.03.2005 is quashed and set aside. The detenu Maheshbhai Dahyabhai Aud is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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